

CHAPTER 5 CITY EMPLOYEES AND OFFICERS

TABLE

5-01	City service; offices excepted
5-02	Residency requirements
5-03	Examination notice
5-05	Compensation for services
5-06	Bi-weekly payment of salary
5-07	Accounts of moneys received
5-08	Negligence of duty
5-09	Interest in contracts
5-10	Pecuniary interest in public service contracts
5-11	Conflicts of interest
5-12	False certification of work
5-13	Prohibited practices
5-50	Deferred compensation plan

5-01. City Service; Offices Excepted. Officers of the city of Milwaukee who are elected by the people, or who by the statutes are required to be elected by the city council, inspectors and clerks of election, one deputy in each department whose office was created or exists by reason of statute, heads of any principal departments of the city, all members of the fire and police departments and all other employees of the fire and police departments, one private secretary of the mayor and any other officers, clerks or employees in the service of the city whose positions in the judgment of the city service commissioners cannot for the time being be subjected, with advantage to the public service, to the general rules prepared under the civil service law, shall not be affected as to their election, selection or appointment by such rules made by said commissioners.

(HISTORY: Section 5-01, am., Ch. Ord. 310, File #64-4089, April 6, 1965.)

5-02. Residency Requirements. 1. RESIDENCY REQUIRED. All employees of the city of Milwaukee are required to establish and maintain their actual bona fide residences within the boundaries of the city. Any employee who does not reside within the city shall be ineligible to employment by the city and his employment shall be terminated in the manner hereinafter set forth.

2. DEFINITION. The term "residence" employed in this section shall be construed to mean the actual living quarters which must be maintained within the city by an employee.

Neither voting in the city nor the payment of taxes of any kind by itself by an employee shall be deemed adequate to satisfy the requirements of this section, nor shall the provisions of this section be satisfied by the maintaining of a rented room or rooms by an employee solely for the purpose of establishing residence in the city when it appears that his or her residence is outside of the city. Ownership of real property within the city, when not coupled with maintaining of actual living quarters in the city as herein required, shall be deemed insufficient to meet the requirements of this section. The city service commission is authorized to investigate complaints made to it with respect to the residence of employees of the city and may initiate any such investigation on its own motion. Whenever such investigation shall be made, the city service commission shall make a finding with respect to whether or not such an employee is or is not actually a resident of the city in accordance with the requirements set forth herein. No consideration shall be given by the city service commission to the fact that such employee intends to maintain a residence in the city if actually he or she does not maintain such a residence as herein provided for.

3. DUAL RESIDENCE. In cases in which dual or multiple residences are rented, owned or maintained by an employee, it is not sufficient for the employee to claim city residency because of rental, ownership or maintenance of a residence in the city if the employee's actual living quarters are not in the city. The city service commission shall make final determination in dual or multiple residence cases as to which location constitutes an employee's actual living quarters, and it shall be the location which will be considered in establishing whether an employee complies with the intent of this section and city service rules relating to residency. The city service commission shall promulgate and publish a policy statement describing factors which it will consider when making residency determinations. This statement will in no way limit the commission's consideration to any specific set of factors. Decisions involving dual or multiple residency shall be based upon the totality of circumstances present in each case. The decision of the city service commission

5-02-4 City Employees And Officers

shall be final in respect to whether or not such employee's residence satisfies the provisions and requirements of this section.

4. TIME TO MOVE TO CITY, ETC.

a. Any city employee who resides on any property belonging to the city of Milwaukee, although located outside the limits of said city, shall not be affected by the restrictions of this section. Any area which has been by ordinance annexed to or consolidated with the city shall be regarded as being a part of the city unless such ordinance shall be finally declared invalid by a court of competent jurisdiction. In the event of such occurrence, an employee shall be granted a reasonable period of time in which to move into the city. The city service commission shall establish what constitutes a reasonable period of time for that purpose.

b. Any employee of the city residing in an area which is no longer a part of the city shall have a reasonable time within which to move into the city. The city service commission shall establish what constitutes a reasonable period of time for that purpose.

5. ACTION BY DEPARTMENT HEAD. Whenever a department head finds that an employee is not a resident of the city within the meaning of this section, the department head shall immediately file a written complaint against that employee to effectuate the separation of that employee from the service.

6. EXTENSION. Whenever it shall appear to the city service commission that good cause exists for granting extensions of time to employees of the city to obtain residences within the city, or if it shall appear to the city service commission that a new or prospective employee of the city would require a reasonable period of time in order to acquire a residence in the city so as to qualify for a position in city service, the city service commission may allow such employee a period of not to exceed 6 months in which to satisfy the requirements of this section.

7. HARDSHIP EXCEPTIONS.

a. Whenever it shall appear to the city service commission, considering the standards hereafter enumerated, that an employee should be granted temporary exception from the requirements of this section, the city service commission shall make a finding based upon the standards and shall file a report with the committee on finance and

personnel, listing the name of the employee and the reason or reasons for the exception, such report to be filed within 15 days of such action.

b. In the event that a city employee weds an employee of another jurisdiction which also has a residency requirement, mandating that its employee reside within that jurisdiction's boundaries, and if that employment is in effect at the time of the marriage, the city service commission may grant the city employee an exemption from the city's residency requirements, provided that the following conditions are and remain in effect:

b-1. That the other jurisdiction is willing to enter into an appropriate reciprocity agreement with the commission concerning such transactions.

b-2. That the city employee actually resides with his or her spouse in the spouse's jurisdiction.

b-3. That both employing jurisdictions retain their respective residency policies.

b-4. That the response time required for the exempted employee to arrive at work in emergency situations be reasonable as determined by the commission.

b-5. That the residency requirements of the other jurisdiction would preclude the married couple from living in the city of Milwaukee.

8. REVIEW STANDARDS. a. The following factors may be considered by the city service commission in deciding to grant or not to grant an exception to the residence requirement:

a-1. Availability of persons eligible.
a-2. Requisite technological or professional education.

a-3. Responsibility of the job.
a-4. Quantity of persons eligible.
a-5. Quality of the service to be performed.

a-6. Ability to supervise.
a-7. Need to know conditions within the city.
a-8. Diminution of absenteeism and tardiness.

b. This attempt to establish standards for exceptions of the residency requirement recognizes that such standards need not be specified with exactitude. It further recognizes that mere eligibility and availability does not necessarily offer the range of selection which will contribute to the development of the best service.

c. Exceptions granted to employees previously will be reviewed immediately upon passage and publication of this subsection and all exceptions will be reviewed once every year.

9. FIRE AND POLICE REGULATIONS. The provisions of this section shall be fully applicable to members of the police force and the fire department. However, in the case of a member of the police force or fire department, or any clerical employee thereof, the determination as to residence shall be made by the fire and police commission, and the responsibility for the administration, interpretation and enforcement of this section shall be vested in the fire and police commission.

10. COMPLIANCE. In construing and applying the provisions of this section, the provisions of any section inconsistent herewith shall be deemed amended so as to be in all respects consistent with the provisions of this section.

(HISTORY: Section 5-02 rc. Ch. Ord. 226, File #56-1775-a, Sept. 18, 1956.

5-02-2 am, File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-3 am Ch. Ord. 253, File #59-395-a, June 9, 1959.

5-02-3 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-3 cr., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-4 rc., File #941973, Dec. 17, 1996; eff. Mar. 10, 1997.

5-02-4 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-5 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-6 rc., Ch. Ord. 427, File #73-2118-a, Nov. 11, 1975.

5-02-6 am., File #941973, Dec. 17, 1996; eff. Mar. 10, 1997.

5-02-6 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-7 rc., Ch. Ord. 427, File #73-2118-a, Nov. 11, 1975.

5-02-7 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-8 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.

5-02-9 m., File #971321, Mar. 20, 1998; eff. June 4, 1998.)

5-03. Examination Notice. 1. TO BE POSTED. Notice of each examination to be held by the board of city service commissioners of the city of Milwaukee shall be given by posting such

notice in or immediately adjacent to the office of the said board at least 10 days prior to the last day announced for receipt of applications, and said posting shall be such as to make the said notice readily accessible to public view. Nothing herein shall prohibit or restrain the said board or its chief examiner from giving such further publicity as it or he may deem to be useful.

2. APPLICATION FORM. Every application for examination by the board of city service commissioners, in order to entitle the applicant to be examined, must be on a form prescribed by the said board, and shall include such facts regarding age, residence, citizenship, education, experience and other subjects as are customarily called for in civil service application blanks. Such other information shall be furnished by the applicant as may reasonably be required regarding the applicant's fitness for the public service.

(HISTORY: Section 5-03 am Ch. Ord. 120, File #74714-a, July 13, 1942.

5-03 am Ch. Ord. 149, File #48-2837-a, March 28, 1949.)

5-05. Compensation for Services. No officer or employee receiving a salary from any city whether organized under general or special law, shall receive for service of any kind or nature rendered such city any compensation therefor other than the salary fixed and provided for such office, except that the common council may establish by appropriate resolution, performance incentive compensation plans designed to improve the productivity of employees. Incentive compensation plans established pursuant to this exception shall be subject to review and approval annually. This act shall apply to all officials now serving or hereafter elected or appointed to public place. Provided, that for the purposes of this section moneys or funds held by any such city as pension funds shall not be considered or construed to be city money or funds, and that the payment to or receipt by any person of any money from any such funds shall not be construed as the payment or receipt of money or compensation from such city. Provided further, that this section shall not apply to nor be construed to prohibit the employment of any such official or employee by any school board of such city for the purpose of supervision, teaching or other duties in any evening or night school, social center, summer school, or other extension activity, and that the payment to or receipt by any such person of any

5-06 City Employees And Officers

money for such service shall not be construed to be in conflict with this section. The common council may authorize by appropriate resolution and determine the manner of awarding cash payments to any city employee in exchange for suggestions or recommendations which may tend to improve the efficiency of city government or which will promote the city's general welfare. Such awards shall not be deemed compensation to a city employee.

(HISTORY: Section 5-05 am Ch. Ord. 500, File #80-1709, Jan. 20, 1991.)

5-06. Bi-weekly Payment of Salary. 1. Officers and employees of the city of Milwaukee shall be paid bi-weekly.

2. Deductions for time off for which officers and employees employed on a 40 hour week basis are not entitled to pay shall be 1/10 of the bi-weekly rate of pay for each day missed.

3. The comptroller is directed to devise and enforce methods of calculating pay deductions for time worked and time off for employees compensated on other than a 40 hour week or on an irregular time basis and for employees on a 2000 hour per year basis.

(HISTORY: Section 5-06 am Ch. Ord. 323, File #62-2554-d, Oct. 21, 1966.

5-06-1 am Ch. Ord. 391, File #72-723, July 28, 1972.)

5-07. Accounts of Moneys Received. The city treasurer shall keep an accurate account of all moneys received by him for fees, commissions, and percentages, which he is required by section thirty-six of chapter eighteen of this act [S. 36, Subch. 18, Ch. 184, L. 1874], to pay into the city treasury for the use of the city; and the city clerk and the city attorney shall each keep a like account of all moneys received by him for and in behalf of said city; and said treasurer, clerk and attorney shall each, at the end of each and every three months during his term of office, pay into the city treasurer all such moneys remaining in his hands and file a transcript of such account with the city comptroller, accompanied by his affidavit that the same is a just, true and complete account of all moneys so received by him during the three months then next preceding and by the city treasurer's receipt showing that all such moneys have actually been paid into the city treasury; and it shall not be lawful for the

mayor, city comptroller, or common council, to pass or settle the accounts, or to order, or draw, countersign or deliver any warrant for the payment of any portion of the salary or allowance of either of said officers, after any failure by him to file such verified quarterly transcript of account with the city comptroller, or to pay such moneys into the city treasury so long as such officer shall continue to be so delinquent. (S. 3, Subch. 16, Ch. 184, L. 1874.)

5-08. Negligence of Duty. If either said treasurer, attorney or clerk of said city shall willfully neglect or violate any provision or requirement of the preceding section [S. 5.07], or any duty therein or thereby imposed upon him, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in the county jail of said county of Milwaukee not less than two months nor more than one year, or by both fine and imprisonment, in the discretion of the court; and it shall be the duty of the common council to cause an action to be forthwith commenced and prosecuted to final judgment against such officer and the sureties on his official bond, if any, for the recovery of all moneys in his hands, which, by the terms of the preceding section, and the section therein referred to, he is required to pay into the city treasury. In case said common council shall neglect to cause such action to be commenced within thirty days after any delinquency shall occur in the payment of any moneys required to be paid into the city treasury by any officer under said sections, such action may be brought and prosecuted by any taxpayer of the said city, in the name and for the benefit of said city; provided, that before commencing such action, a bond to said city shall be executed and filed in the office of the city comptroller, in the penal sum of five hundred dollars, with sufficient sureties approved by the judge of the circuit court of said county of Milwaukee, conditioned to pay all costs and damages which may be recovered against said city in such action, and to indemnify the city against any and all cost, expenses and damages by reason of such action; and such action when so commenced by a taxpayer shall not be subject to the control or management of said city or of any officer thereof. (S. 4, Subch. 16, Ch. 184, L. 1874.)

5-09. Interest in Contracts. No person interested, directly or indirectly as principal or surety, in any contract or agreement written or verbal, to which the said city shall be a party in interest, or to which any officer or board under this act (ch. 184, L. 1874 as amended) shall officially be a party, for the construction of any sewer, pavement or building, or the performance of any public work whatever, or involving the expenditure, receipt or disposition of money or property of the said city, or by any officer or board under this act, shall be eligible to any office or appointment in said city that will in any manner give him official cognizance or authority over the subject matter of such interest; and if any person thus interested shall be elected or appointed to office, his election or appointment shall be void, and such office shall be deemed vacant. *(Section 5-09 am. Ch. Ord. 323, File #62-2554-d, Oct. 21, 1966.)*

5-10. Pecuniary Interest in Public Service Contracts. No person shall be eligible to any city office who directly or indirectly has any pecuniary interest in any contract for furnishing heat, light, water, power, or other public service to or for such city, or who is a stockholder in any corporation which has any such contract. Any such office shall become vacant upon the acquiring of any such interest by the person holding such office. *(S. 961 Stats. 1919.)*

5-11. Conflicts of Interest. If any member of the common council, or other officer of the corporation, after his election or appointment, or while in office shall become or cause himself to become interested, directly or indirectly, in any contract or agreement, whether written or verbal, to which the corporation shall be a party in interest, or to which any officer or board under this act (ch. 184, L. 1874) shall officially be a party, or in any question, subject or proceeding pending before the common council or on which such officer may be called upon to act officially, with intent to gain, directly or indirectly, any benefit, profit, or pecuniary advantage, or if an attorney of any court of record shall, while a member of the common council, prosecute or be interested in the prosecution of any action against said city of Milwaukee, or any of its officers, he shall be removed from his office, and the same shall be declared vacant by the common council; and he shall be deemed guilty of felony, and on conviction thereof shall be punished by imprisonment in the state prison for not more than one year, or by fine of not more than

\$5,000 nor less than \$500, or by both such fine and imprisonment, in the discretion of the court; provided, however, that the provisions of this section shall not be considered as applying to purchases in open market, nor to the performance of any work for the city the cost of which shall not exceed the sum of \$200.

(HISTORY: Section 5-11 am, Ch. Ord. 323, File #62-2554-d, Oct. 21, 1966.)

5-12. False Certification of Work. If any member of the common council, or other officer or agent of the city government, or any person employed, appointed or confirmed by the common council or appointed by any department of the city government, shall knowingly certify that any work has been done for said city, or any contract with said city has been completed in compliance with the terms thereof when in fact such work had not been done, or said contract had not been completed, such member of the common council, officer or agent, shall be removed from office, and his office declared vacant, and no such officer, agent or employe, shall again be elected, appointed or employed by, or for the city of Milwaukee, to any office, place or position whatever. *(S. 45, Ch. 144, L. 1875.)*

5-13. Prohibited Practices. If any member of the common council, or other officer or agent of the city government, shall, directly or indirectly, accept or agree to accept or receive, any money, goods or chattels, or any bank note, bank bill, bond, promissory note, due bill, bill of exchange, draft, order or certificate, or any security for the payment of money or goods or chattels, or any deed of writing containing a conveyance of land or conveying or transferring an interest in real estate, or any valuable contract in force, or any other property or reward whatever, in consideration that such member of the common council, or other officer or agent, will vote affirmatively or negatively, or that he will not vote, or that he will use his interest and influence, on any question, ordinance, resolution, contract, or other matter or proceeding, pending before the common council, or on which such officer or agent may be called upon to decide or act in any particular manner, such member of the common council, officer, or agent, shall be removed from office and his office declared vacant by the common council; and both he and the person or persons offering or paying such consideration, directly or indirectly, shall

5-50 City Employees And Officers

be deemed guilty of felony, and, on conviction thereof, shall be punished by imprisonment in the state prison for not more than three years nor less than one year, or by fine not exceeding five thousand dollars nor less than five hundred dollars, or by both such fine and imprisonment at the discretion of the court. (S. 6, *Subch. 19, Ch. 184, L. 1874.*)

5-50. Deferred Compensation Plan.

1. ESTABLISHED. There is established a deferred compensation plan for employees of the city. Such plan shall be an eligible deferred compensation plan under s. 457 of the Internal Revenue Code and shall be by specific written agreement between such employees and the city which shall provide for deferral of such amount of compensation from the employee's wages as requested by the employee. Payments to participating employees under the plan shall be made in accordance with agreements executed between the city and the employees.

2. ELIGIBILITY. Employees of the city who receive compensation in the form of wages and salaries shall be eligible for participation in the deferred compensation plan. In order to participate, employees must file a written election.

3. INVESTMENT OF FUNDS. All amounts of compensation deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property of rights shall be held in trust for the exclusive benefit of participants and beneficiaries as provided in s. 457 of the Internal Revenue Code. For purposes of this subsection, custodial accounts and contracts described in s. 457(g) of the Internal Revenue Code shall be treated as trusts. Such compensation, property, rights and income shall be invested at the discretion of the board in the manner authorized for deferred compensation funds under s. 881.01(1), Wis. Stats. Such compensation, property, rights and income shall be held subject to the anti-alienation provisions contained in s. 66.81, Wis. Stats.

4. ADMINISTRATION. The common council may by ordinance establish a board to supervise the plan. The board shall serve as a fiduciary under s. 881.01(1), Wis. Stats., with respect to assets of the plan. The board may promulgate such rules as may be necessary to supervise and direct such plan and to secure

approval of the Internal Revenue Service so that amounts of compensation deferred by a participant will be includable in the income of the participant or his or her beneficiary only when such amounts are paid or otherwise made available. Proper city officers are authorized to execute on behalf of the city such agreements as are formulated by the board in the implementation of the plan. Deferred compensation held in the name of the city or the custodian for the exclusive benefit of the participants and beneficiaries in accordance with the plan shall be invested at the direction of the board in accordance with the requirements of law. The comptroller shall prescribe accounting procedures for the plan. Whenever the city shall so contract with other employers, the board shall jointly administer 2 or more separate deferred compensation plans.

5. COMPLIANCE. Common council resolution file No. 73-2160-a adopted Oct. 8, 1974, as amended by common council resolution file No. 73-2160-b adopted Dec. 23, 1974, and as further amended by common council resolution file No. 73-2160-c adopted July 29, 1975, the master agreement heretofore executed on behalf of the city on Dec. 16, 1975, joinder agreements heretofore executed between the city and participating employees and such other elements of the amended plan as have been finally approved by the Internal Revenue Service are approved, confirmed and ratified effective upon their respective dates as implementations of the deferred compensation plan authorized by this ordinance meeting the requirements established under this section.

(HISTORY: Section 5-50 cr. Ch. Ord. 441, File #73-2160-g, Jan. 18, 1977.

5-50-1 am. File #912292, April 15, 1992; eff. July 6, 1992.

5-50-2 am., Ch. Ord. 492, File #80-277-a, July 29, 1990.

5-50-3 rc. File #912292, April 15, 1992; eff. July 6, 1992.

5-50-3 am File #980689, Sept. 23, 1998; eff. Dec. 9, 1998.

5-50-4 am., Ch. Ord. 476, File #73-2160-j, June 15, 1979.

5-50-4 am., Ch. Ord. 519, File #82-1295, Nov. 9, 1982.

5-50-4 am. File #971476, Jan. 20, 1998; eff. April 7, 1998

5-50-4 am. File #980689, Sept. 23, 1998; eff. Dec. 9, 1998.)